



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
on March 18, 2014

Date of Meeting: July 9, 2013

The Mayor and Council of the City of Tucson met in regular session in the Mayor and Council Chambers in City Hall, 255 West Alameda Street, Tucson, Arizona, at 5:30 p.m., on Tuesday, July 9 2013, all members having been notified of the time and place thereof.

Roger W. Randolph, City Clerk, announced Vice Mayor Romero was unable to be present for the evening's meeting, but would be participating by telephone. This was allowable under the Mayor and Council Rules and Regulations. He stated Council Member Romero could vote on all matters in the same way as those members physically present as long as she participated in the discussions. On the evening's agenda, all votes would be done by roll call rather than voice vote.

1. **ROLL CALL**

The meeting was called to order by Mayor Rothschild and upon roll call, those present and absent were:

Present:

Regina Romero	Vice Mayor, Council Member Ward 1 (electronic attendance)
Paul Cunningham	Council Member Ward 2
Karin Uhlich	Council Member Ward 3
Shirley C. Scott	Council Member Ward 4
Richard G. Fimbres	Council Member Ward 5
Steve Kozachik	Council Member Ward 6
Jonathan Rothschild	Mayor

Absent/Excused:

None

Staff Members Present:

Richard Miranda	City Manager
Michael Rankin	City Attorney
Roger W. Randolph	City Clerk

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Reverend Lois Blei, Eastside Assembly of God, after which the Pledge of Allegiance was presented by the entire assembly.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Rothschild announced City Manager's communication number 264, dated July 9, 2013, was received into and made part of the record. He also announced this was the time scheduled to allow members of the Mayor and Council to report on current events and asked if there were any reports.

Current event reports were provided by Council Members Cunningham, Scott, Fimbres, and Kozachik. A recording of this item is available from the City Clerk's Office for ten years from the date of this meeting.

4. CITY MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

Mayor Rothschild announced City Manager's communication number 265, dated July 9, 2013, was received into and made part of the record. He also announced this was the time scheduled to allow the City Manager to report on current events, and asked for that report.

Current event report was given by Richard Miranda, City Manager. A recording of this item is available from the City Clerk's Office for ten years from the date of this meeting.

5. LIQUOR LICENSE APPLICATIONS

Mayor Rothschild announced City Manager's communication number 270, dated July 9, 2013, was received into and made part of the record. He asked the City Clerk to read the Liquor License Agenda.

b. Liquor License Application(s)

New License(s)

1. Smashburger #2, Ward 6
3837 E. Broadway Blvd.
Applicant: Eric Laurence Wolf
Series 12, City 22-13
Action must be taken by: June 3, 2013

Staff has indicated the applicant is in compliance with city requirements.

2. Bruno Panini, Ward 6
118 E. Congress St.
Applicant: Bessie Josie Lietzau
Series 12, City 26-13
Action must be taken by: June 10, 2013

Staff has indicated the applicant is in compliance with city requirements.

3. The Coronet, Ward 6
402 E. 9th St.
Applicant: Sally Lewyn Kane
Series 12, City 29-13
Action must be taken by: June 21, 2013

Staff has indicated the applicant is in compliance with city requirements.

Public Opinion: Written Arguments In Favor Filed

4. Doubletree Hotel, Ward 6
445 S. Alvernon Way
Applicant: Andrea Dahlman Lewkowitz
Series 11, City 35-13
Action must be taken by: July 11, 2013

Staff has indicated the applicant is in compliance with city requirements.

5. Mimi's Cafe, Ward 6
120 S. Wilmot Rd.
Applicant: Andrea Dahlman Lewkowitz
Series 12, City 36-13
Action must be taken by: July 11, 2013

Staff has indicated the applicant is in compliance with city requirements.

6. Mimi's Cafe, Ward 3
4420 N. Oracle Rd.
Applicant: Andrea Dahlman Lewkowitz
Series 12, City 37-13
Action must be taken by: July 11, 2013

Staff has indicated the applicant is in compliance with city requirements.

NOTE: State law provides that for a new license application, "In all proceedings before the governing body of a city...the applicant bears the burden of showing that the public convenience requires and that the best interest of the community will be substantially served by the issuance of a license". (A.R.S. Section 4-201)

Person Transfer(s)

7. NOTE: There are no application(s) for person transfers scheduled for this meeting.

c. Special Event(s)

1. 2nd Saturdays, Ward 6
110 E. Pennington St.
Applicant: Fletcher J. McCusker
City T76-13
Date of Event: July 27, 2013
(Fundraiser)

Staff has indicated the applicant is in compliance with city requirements.

d. Agent Change/Acquisition of Control

1. Monterey Market, Ward 5
4129 E. 29th St.
Applicant: Jose Pedro Zapata
Series 10, City AC6-13
Action must be taken by: July 21, 2013

Staff has indicated the applicant is in compliance with city requirements.

NOTE: The local governing body of the city, town or county may protest the acquisition of control within sixty days based on the capability, reliability and qualification of the person acquiring control. (A.R.S. Section 4-203.F)

It was moved by Council Member Fimbres, duly seconded and passed by a roll vote of 7 to 0, to forward liquor license applications Items 5b1 through 5b7, 5c1, and 5d1 to the Arizona State Liquor Board with a recommendation for approval.

6. CALL TO THE AUDIENCE

Mayor Rothschild announced this was the time any member of the public was allowed to address the Mayor and Council on any issue except for items scheduled for a public hearing. Speakers were limited to three-minute presentations.

Mayor Rothschild also announced that pursuant to the Arizona Open Meeting Law, individual Council Members may ask the City Manager to review the matter, ask that the matter be placed on a future agenda, or respond to criticism made by speakers. However, the Mayor and Council may not discuss or take legal action on matters raised during "call to the audience."

Comments were made by:

Billy Lolos
Robert Reus
Nick Johnson

Mary DeCamp
Shawn Earl
Mike Holmes

Donald Lacey
Keith Van Heyningen
Joe Yee

A recording of this item is available from the City Clerk's Office for ten years from the date of this meeting.

7. CONSENT AGENDA – ITEMS A THROUGH DD

Mayor Rothschild announced the reports and recommendations from the City Manager on the Consent Agenda were received into and made part of the record. He asked the City Clerk to read the Consent Agenda.

a. APPROVAL OF MINUTES

1. Report from City Manager JUL09-13-267 CITY WIDE
2. Mayor and Council Special Meeting Minutes of December 11, 2012
3. Mayor and Council Regular Meeting Minutes of December 18, 2012
4. Mayor and Council Study Session Legal Action Report and Summary Minutes of December 18, 2012

b. FINANCIAL PARTICIPATION AGREEMENTS AND INTERGOVERNMENTAL AGREEMENT: WITH VARIOUS OUTSIDE AGENCIES

1. Report from City Manager JUL09-13-278 CITY WIDE
2. Resolution No. 22022 relating to Outside Agency Activities; authorizing and approving the Financial Participation Agreements between the City of Tucson and various outside agencies and an Intergovernmental Agreement between the City of Tucson and Pima County for Animal Care and Enforcement Services for Fiscal Year 2014; and declaring an emergency.

(This item was considered separately at the request of Council Member Kozachik)

c. TUCSON CODE: AMENDING (CHAPTER 20) RELATING TO ONE-WAY STREETS AND ALLEYS AND REPEALING ORDINANCE 10940

1. Report from City Manager JUL09-13-276 CITY WIDE

2. Ordinance No. 11091 relating to Motor Vehicles and Traffic; repealing Ordinance No. 10940 of October 25, 2011, and designating current streets and alleys or parts of streets and alleys as one-way, pursuant to Section 20-179 of the City Code; and declaring an emergency.
- d. INTERGOVERNMENTAL AGREEMENT: WITH THE PIMA COUNTY RECORDER TO PROVIDE ELECTION RELATED SERVICES FOR THE 2013 CITY OF TUCSON PRIMARY AND GENERAL ELECTIONS
1. Report from City Manager JUL09-13-268 CITY WIDE
 2. Resolution No. 22078 relating to Elections; approving, and authorizing execution of, an Intergovernmental Agreement (with incorporated Exhibit A) between the City of Tucson and Pima County for support services to be provided by the Pima County Recorder for the 2013 City of Tucson Primary and General Elections; and declaring an emergency.
- e. LABOR: RECOGNIZING THE 150TH ANNIVERSARY OF THE FOUNDING OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
1. Report from City Manager JUL09-13-280 CITY WIDE
 2. Resolution No. 22082 relating to Labor; recognizing the 150th anniversary of the founding of the Brotherhood of Locomotive Engineers and Trainmen; and declaring an emergency.
- f. INTERGOVERNMENTAL AGREEMENT: WITH AVRA VALLEY FIRE DISTRICT FOR FIRE PROTECTION SERVICES
1. Report from City Manager JUL09-13-287 CITY WIDE AND OUTSIDE CITY
 2. Resolution No. 22087 relating to Intergovernmental Agreements; authorizing and approving the execution of an Intergovernmental Agreement between the Avra Valley Fire District and the City of Tucson for fire protection services; and declaring an emergency.
- g. REAL PROPERTY: VACATION AND SALE OF CHERRY AVENUE RIGHT OF WAY
1. Report from City Manager JUL09-13-282 WARD 6
 2. Ordinance No. 11093 relating to Real Property; vacating and declaring a segment of Cherry Avenue south of Sixth Street and adjacent Alley rights of way to be surplus property; authorizing the sale thereof to the University of Arizona, along with a Utility Duct Easement; and declaring an emergency.

- h. FINAL PLAT: (S13-012) MARANA MARKETPLACE PHASE III, LOT 1, A RESUBDIVISION OF A PORTION OF LOT 152 OF THE CROSSINGS AT RIVERBEND
 - 1. Report from City Manager JUL09-13-274 WARD 3
 - 2. Staff recommends that they Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.
- i. GRANT AGREEMENT: WITH THE PIMA ASSOCIATION OF GOVERNMENTS FOR VARIOUS FEDERAL TRANSIT ADMINISTRATION GRANTS
 - 1. Report from City Manager JUL09-13-292 OUTSIDE CITY
 - 2. Resolution No. 22092 relating to Transportation; authorizing and approving the Grant Agreement between the City of Tucson and the Pima Association of Governments (PAG) for Federal Transit Administration (FTA) Grants Nos. AZ-37-X009, AZ-37-X012, AZ-37-X016, AZ-37-X020, AZ-37-X023, AZ-57-X004, AZ-57-X006, AZ-57-X011, AZ-57-X015, AZ-57-X017, and AZ-57-X019 allowing the PAG to spend FTA funding for program administration of Job Access and Reverse Commute (JARC) and New Freedoms Programs; and declaring an emergency.
- j. GRANT APPLICATION: TO THE FEDERAL TRANSIT ADMINISTRATION FOR THE JOB ACCESS AND REVERSE COMMUTE PROGRAM
 - 1. Report from City Manager JUL09-13-283 CITY WIDE AND OUTSIDE CITY
 - 2. Resolution No. 22083 relating to Transportation; authorizing and approving the submission of a Federal Transit Administration (FTA) (Section 5316) Job Access and Reverse Commute (JARC) Program Grant Application per FTA Grant AZ-37-X023; and declaring an emergency.
- k. GRANT APPLICATION: TO THE FEDERAL TRANSIT ADMINISTRATION FOR THE NEW FREEDOM PROGRAM
 - 1. Report from City Manager JUL09-13-284 CITY WIDE AND OUTSIDE CITY
 - 2. Resolution No. 22084 relating to Transportation; authorizing and approving the submission of a Federal Transit Administration (FTA) Section 5317 New Freedom Program (NFP) Grant Application, Grant AZ-57-X019; and declaring an emergency.

1. GRANT APPLICATION: TO THE FEDERAL TRANSIT ADMINISTRATION FOR URBANIZED AREA FORMULA FUNDS, SURFACE TRANSPORTATION PROGRAM FUNDS, AND BUS AND BUS FACILITIES
 1. Report from City Manager JUL09-13-285 CITY WIDE
 2. Resolution No. 22085 relating to Transportation; authorizing and approving the submission of a Federal Transit Administration (FTA) (Section 5307) Urbanized Area Formula Funds Application per FTA Grant AZ-90-X126; FTA Surface Transportation Program (STP) Funds Application per FTA Grant AZ-95-X025; and (Section 5339) Bus and Bus Facilities per FTA Grant AZ-34-0001; and declaring an emergency.
- m. GRANT AGREEMENT: WITH THE REGIONAL TRANSPORTATION AUTHORITY FOR FEDERAL TRANSIT ADMINISTRATION GRANTS AZ-37-X009, AZ-37-X012, AZ-37-X016, AND AZ-37-X020
 1. Report from City Manager JUL09-13-289 OUTSIDE CITY
 2. Resolution No. 22089 relating to Transportation; authorizing and approving the Grant Agreement between the City of Tucson and the Regional Transportation Authority of Pima County (RTA) for Federal Transit Administration (FTA) Grants Nos. AZ-37-X009, AZ-37-X012, AZ-37-X016, and AZ-37-X020 allowing the RTA to spend FTA funding to operate the Marana Sun Shuttle Route #413; and declaring an emergency.
- n. GRANT AGREEMENT: WITH THE REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY FOR FEDERAL TRANSIT ADMINISTRATION GRANT AZ-37-X023
 1. Report from City Manager JUL09-13-291 OUTSIDE CITY
 2. Resolution No. 22090 relating to Transportation; authorizing and approving the Grant Agreement between the City of Tucson and the Regional Transportation Authority of Pima County (RTA) for Federal Transit Administration (FTA) Grant No. AZ-37-X023 allowing the RTA to operate Sun Shuttle routes; and declaring an emergency.
- o. GRANT AGREEMENT: WITH THE REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY FOR FEDERAL TRANSIT ADMINISTRATION GRANT AZ-57-X015
 1. Report from City Manager JUL09-13-290 OUTSIDE CITY

2. Resolution No. 22091 relating to Transportation; authorizing and approving the Grant Agreement between the City of Tucson and the Regional Transportation Authority of Pima County (RTA) for Federal Transit Administration (FTA) Grant No. AZ-57-X015 allowing the RTA to expand paratransit services; and declaring an emergency.
- p. GRANT AGREEMENT: WITH THE REGIONAL TRANSPORTATION AUTHORITY FOR FEDERAL TRANSIT ADMINISTRATION GRANTS AZ-37-X021, AZ-57-X017, AND AZ-57-X019
1. Report from City Manager JUL09-13-286 OUTSIDE CITY
 2. Resolution No. 22086 relating to Transportation; authorizing and approving the Grant Agreement between the City of Tucson and the Regional Transportation Authority of Pima County (RTA) for Federal Transit Administration (FTA) Grants Nos. AZ-37-X021, AZ-57-X017, and AZ-57-X019 allowing the RTA to spend FTA funding to purchase six replacement and six new expansion ADA compliant vehicles for the RTA-funded Sun Shuttle and Sun Shuttle Dial-A-Ride routes; and declaring an emergency.
- q. GRANT AGREEMENT: WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION MULTIMODAL PLANNING DIVISION FOR FEDERAL TRANSIT ADMINISTRATION SECTION 5310 OPERATING FUNDING
1. Report from City Manager JUL09-13-309 CITY WIDE
 2. Resolution No. 22107 relating to Transportation; approving and authorizing a Grant Agreement between the City of Tucson and the Arizona Department of Transportation Multimodal Planning Division acting for and on behalf of the State of Arizona for Federal Transit Administration Section 5310 Operating Funding for FY 2013; and declaring an emergency.
- r. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH THE REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY FOR SUN VAN PARATRANSIT SERVICE
1. Report from City Manager JUL09-13-300 CITY WIDE AND OUTSIDE CITY
 2. Resolution No. 22094 relating to Intergovernmental Agreements; authorizing and approving Amendment No. 1 to the Intergovernmental Agreement for transportation funding between the City of Tucson and the Regional Transportation Authority of Pima County (RTA) for the provision of Regional Transit Service Improvements Project 47 - Special Needs Transit for Elderly and Disabled Citizens - Sun Van Paratransit Service for Fiscal Year 2014; and declaring an emergency.

- s. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH THE REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY FOR WEEKDAY EVENING BUS SERVICE EXPANSION
 - 1. Report from City Manager JUL09-13-299 CITY WIDE AND OUTSIDE CITY
 - 2. Resolution No. 22098 relating to Intergovernmental Agreements; approving and authorizing execution of Amendment No. 4 to the Intergovernmental Agreement between the City of Tucson and the Regional Transportation Authority of Pima County (RTA) for Weekday Evening Bus Service Expansion for Fiscal Year 2014; and declaring an emergency.
- t. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH THE REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY FOR WEEKEND BUS SERVICE EXPANSION
 - 1. Report from City Manager JUL09-13-298 CITY WIDE AND OUTSIDE CITY
 - 2. Resolution No. 22101 relating to Intergovernmental Agreements; approving and authorizing execution of Amendment No. 4 to the Intergovernmental Agreement between the City of Tucson and the Regional Transportation Authority of Pima County (RTA) for Weekend Bus Service Expansion for Fiscal Year 2014; and declaring an emergency.
- u. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH THE REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY FOR THE BUS FREQUENCY AND AREA EXPANSION PROJECT
 - 1. Report from City Manager JUL09-13-296 CITY WIDE AND OUTSIDE CITY
 - 2. Resolution No. 22099 relating to Intergovernmental Agreements; approving and authorizing execution of Amendment No. 4 to the Intergovernmental Agreement between the City of Tucson and the Regional Transportation Authority of Pima County (RTA) for Bus Frequency and Area Expansion (Overcrowding Relief-Plugs) and Improvements for Fiscal Year 2014; and declaring an emergency.
- v. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH THE REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY FOR EXPRESS BUS SERVICE EXPANSION IMPROVEMENTS
 - 1. Report from City Manager JUL09-13-297 CITY WIDE AND OUTSIDE CITY

2. Resolution No. 22100 relating to Intergovernmental Agreements; authorizing and approving the execution of Amendment No. 4 to the Intergovernmental Agreement between the Regional Transportation Authority of Pima County and the City of Tucson for Express Bus Service Expansion Improvements; and declaring an emergency.
- w. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH THE REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY FOR THE PROVISION OF FIXED-ROUTE TRANSIT SERVICE FOR DESIGNATED AREAS OF MARANA
1. Report from City Manager JUL09-13-295 CITY WIDE AND OUTSIDE CITY
 2. Resolution No. 22097 relating to Intergovernmental Agreements; authorizing and approving Amendment No. 1 to the Intergovernmental Agreement between the City of Tucson and the Regional Transportation Authority of Pima County (RTA) for the Provision of Fixed-Route Transit Service (Sun Tran) for Designated Areas of Marana for Fiscal Year 2014, and declaring an emergency.
- x. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH THE REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY FOR THE PROVISION OF FIXED-ROUTE TRANSIT SERVICE FOR DESIGNATED AREAS OF SOUTH TUCSON
1. Report from City Manager JUL09-13-294 CITY WIDE AND OUTSIDE CITY
 2. Resolution No. 22096 relating to Intergovernmental Agreements; approving and authorizing Amendment No. 1 to the Intergovernmental Agreement between the City of Tucson and the Regional Transportation Authority of Pima County (RTA) for the Provision of Fixed-Route Transit Service (Sun Tran) for Designated Areas of South Tucson for Fiscal Year 2014, and declaring an emergency.
- y. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH THE REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY FOR THE PROVISION OF FIXED-ROUTE TRANSIT SERVICE FOR DESIGNATED AREAS OF PIMA COUNTY
1. Report from City Manager JUL09-13-293 CITY WIDE AND OUTSIDE CITY

2. Resolution No. 22095 relating to Intergovernmental Agreements; authorizing and approving Amendment No. 1 to the Intergovernmental Agreement between the City of Tucson and the Regional Transportation Authority of Pima County (RTA) for the Provision of Fixed-Route Transit Service (Sun Tran) for Designated Areas of Pima County for Fiscal Year 2014, and declaring an emergency.
- z. AGREEMENT: WITH PIMA ASSOCIATION OF GOVERNMENTS FOR TRANSPORTATION PLANNING AND PROFESSIONAL SERVICES
1. Report from City Manager JUL09-13-307 CITY WIDE
 2. Resolution No. 22105 relating to Transportation; approving and authorizing the Agreement for Services between the City of Tucson Department of Transportation (TDOT) and Pima Association of Governments (PAG) for Transportation Planning and Professional Services during FY 2014; and declaring an emergency.
- aa. AGREEMENT: WITH VAIL WATER COMPANY TO WHEEL CENTRAL ARIZONA PROJECT WATER
1. Report from City Manager JUL09-13-277 CITY WIDE AND OUTSIDE CITY
 2. Resolution No. 22081 relating to Water; authorizing and approving the execution of an Agreement with the Vail Water Company to wheel Central Arizona Project water to the Vail Water Company; and declaring an emergency.
- bb. WATER: AMENDING THE TUCSON WATER SERVICE AREA POLICY TO INCLUDE THE NINE REFINEMENTS ADOPTED BY THE CITIZENS' WATER ADVISORY COMMITTEE
1. Report from City Manager JUL09-13-275 CITY WIDE AND OUTSIDE CITY
 2. Resolution No. 22080 relating to Water; amending the Tucson Water Service Area Policy by amending Resolution No. 21602, adopted August 4, 2010, to include the "Nine Refinements" adopted by the Citizens' Water Advisory Committee; and declaring an emergency.

Michael Rankin, City Attorney, read corrections into the record:

- On Page 2 of the Resolution, in subsection C.1., the last sentence would be revised to read "For mixed-use developments, the 50-acre criteria will apply if the residential portion of the development is less than 20 net developable acres."

- On Page 5 of the Resolution, in Section 6, a new subsection 6 would be added to read “Any Mayor and Council action under this section will be scheduled for consideration on the regular session as a public hearing. In reviewing the Board’s findings, the Mayor and Council will consider the best available data regarding Tucson’s water resources portfolio and whether the provision of water outside the service area would be consistent with maintaining a long term sustainable water supply.”
 - Beginning at the end of Page 5, a new Section 9 would be added to the Resolution, to read “Subsection 1(I) of Resolution No. 21602 is amended to read as follows, The Mayor and Council will consider the best available data regarding Tucson’s water resources portfolio in adopting modifications to the Water Service Area policy in order to ensure that the policy is consistent with maintaining a sustainable water supply.” This language would be added to the existing language in the section.
- cc. GRANT AGREEMENT: WITH THE ARIZONA CRIMINAL JUSTICE COMMISSION FOR DRUG CONTROL AND SYSTEM IMPROVEMENT
1. Report from City Manager JUL09-13-288 CITY WIDE
 2. Resolution No. 22088 relating to Grants; approving and authorizing execution of a Grant Agreement with the Arizona Criminal Justice Commission (ACJC) for Drug, Gang and Violent Crime Control for Fiscal Year 2014; and declaring an emergency.
- dd. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR THE PURPOSE OF PARTICIPATING IN THE FEDERALLY FUNDED HOME PROGRAM
1. Report from City Manager JUL09-13-308 CITY WIDE
 2. Resolution No. 22106 relating to Intergovernmental Agreements; approving and authorizing an Intergovernmental Agreement between Pima County and the City of Tucson renewing the Consortium Agreement for the purpose of participating in the federally funded HOME Program; and declaring an emergency.

It was moved by Council Member Kozachik, duly seconded, and passed by a roll call vote of 7 to 0, that Consent Agenda Items a – dd, with the corrections to Item bb, and the exception of Item b, which was considered separately, and be passed and adopted and the proper action taken.

7. CONSENT AGENDA – ITEM B

b. FINANCIAL PARTICIPATION AGREEMENTS AND INTERGOVERNMENTAL AGREEMENT: WITH VARIOUS OUTSIDE AGENCIES

1. Report from City Manager JUL09-13-278 CITY WIDE
2. Resolution No. 22022 relating to Outside Agency Activities; authorizing and approving the Financial Participation Agreements between the City of Tucson and various outside agencies and an Intergovernmental Agreement between the City of Tucson and Pima County for Animal Care and Enforcement Services for Fiscal Year 2014; and declaring an emergency.

Roger W. Randolph, City Clerk, announced the item to be considered separately was Consent Agenda Item b at the request of Council Member Kozachik.

Council Member Kozachik expressed his concerns regarding the Pima County for Animal Care agreement. He stated his main issue was with the two year stipulation, considering the Humane Society was in the middle of a major capital campaign. As a result, Mr. Kozachik recommended restricting the contract to one year in an effort to engage Pima County for Animal Care and the Humane Society in a more effective way.

It was moved by Council Member Kozachik to limit the term of the contract with Pima Animal Care Center to one year, rather than two years. The motion died due to lack of a second.

It was moved by Council Member Scott, duly seconded, and passed by a roll call vote of 5 to 2 (Council Member Kozachik and Mayor Rothschild dissenting), to pass and adopt Resolution No. 22022.

8. PUBLIC HEARING: PROPOSED ALTERNATIVE EXPENDITURE LIMITATION (HOME RULE OPTION) AND PERMANENT BASE ADJUSTMENT

Mayor Rothschild announced City Manager's communication number 266, dated July 9, 2013, was received into and made part of the record. He also announced this was the time and place legally advertised for a public hearing on an alternative spending limit: "Home Rule," or a Permanent Base Adjustment. He said the public hearing was scheduled to last for no more than one hour and speakers were limited to five minute presentations. He asked there was anyone wishing to speak on the issue.

There was no one.

It was moved by Council Member Fimbres, duly seconded, and passed by a roll call vote of 7 to 0, to close the public hearing.

Mayor Rothschild announced the Council would stand adjourned and convene a special meeting for the purpose of considering an alternative spending limit: “Home Rule,” or a Permanent Base Adjustment.

RECESS: 6:23 p.m.

RECONVENE: 6:48 p.m.

(Note: See minutes of the Special Mayor and Council Meeting of June 9, 2013 regarding an alternative spending limit: “Home Rule,” or a Permanent Base Adjustment.)

The meeting was called to order by Mayor Rothschild and upon roll call, those present and absent were:

Present:

Regina Romero	Vice Mayor, Council Member Ward 1 (electronic participation)
Paul Cunningham	Council Member Ward 2
Karin Uhlich	Council Member Ward 3
Shirley C. Scott	Council Member Ward 4
Richard G. Fimbres	Council Member Ward 5
Steve Kozachik	Council Member Ward 6
Jonathan Rothschild	Mayor

Absent/Excused:

None

Staff Members Present:

Richard Miranda	City Manager
Michael Rankin	City Attorney
Roger W. Randolph	City Clerk

9. PUBLIC HEARING: ALVERNON-BROADWAY AREA PLAN AMENDMENT (PA-13-01), SOUTHEAST CORNER OF BROADWAY BOULEVARD AND COLUMBUS BOULEVARD – COMMERCIAL, OFFICE OR HIGH DENSITY RESIDENTIAL

Mayor Rothschild announced City Manager's communication number 273, dated July 9, 2013, was received into and made part of the record. He also announced this was the time and place legally advertised for a public hearing on the *Alvernon-Broadway Area Plan* amendment. He said the public hearing was scheduled to last for no more than one hour and speakers were limited to five minute presentations. He asked if there was anyone wishing to speak on the item.

There was no one.

It was moved by Council Member Fimbres, duly seconded, and passed by a roll call vote of 7 to 0, to close the public hearing.

Mayor Rothschild asked the City Clerk to read Resolution 22079 by number and title only.

Resolution No. 22079 relating to Planning and Zoning; amending the Alvernon-Broadway Area Plan Amendment PA-13-01, southeast corner Broadway Boulevard and Columbus Boulevard – commercial, office or high density residential; and declaring an emergency.

It was moved by Council Member Kozachik, duly seconded, and passed by a roll call vote of 7 to 0, to pass and adopt Resolution No. 22079.

10. PUBLIC HEARING: (SE-13-24) HALCYON ACRES ANNEX NO. 2 WATER CO., INC. – 21ST STREET, SR ZONING, SPECIAL EXCEPTION – APPEAL OF ZONING EXAMINER'S DECISION

Mayor Rothschild announced City Manager's communication number 271, dated July 9, 2013, was received into and made part of the record. He also announced this was the time and place legally advertised for a public hearing on an appeal of the Zoning Examiner's decision regarding a Special Exception Land Use Case. He said the Appellants were Karen Hill and Lisa Irwin, property owners of parcels located near the proposed Special Exception site. Mayor Rothschild requested the City Clerk to read the order for the appeal.

Roger W. Randolph, City Clerk, announced that the order for the Appeal was as follows and that the Applicant and Appellants both had ten minutes to speak.

1. Appellants present their appeal
2. Response from City Staff, if any.
3. Applicant
4. Public Hearing – input from the public

Karen Hill, Appellant, spoke in support of the Appeal of the Zoning Examiner's Decision.

Frank Bangs, on behalf of the applicant Halcyon Water Company, informed that the Council's materials contained the letter from Halcyon on the appeal of the Zoning Examiner's. Mr. Bangs stated that he was there for the purpose of answering if the proposed improvement by Halcyon to its wellsite met the criteria for approval of the special land use exception. Mr. Bangs stated that the upgrade that was needed for future development is compatible with existing development. The land usage agreement was made by Pima County over sixty years ago and ratified by the City of Tucson almost thirty years ago. He stated that the *Land Use Code* lists five criteria that must be met. Based on the requirement the Planning and Development Services Department (PSDS) recommended approval with some conditions after a hearing with Mr. Kafka in April. The application satisfied the criteria and approved the special exception land use with conditions. Mr. Bangs stated the Appellants based their contest on one of the five criteria in the *Land Use Code* – Compliance with the City of Tucson's *General Plan* and the *Pantano East Area Plan*. Mr. Bangs stated that the Appellants have conceded that the other four criteria have been met. He stated that the Halcyon upgrades comply with the *General Plan* and the *Pantano East Area Plan*. In addition, Mr. Bangs referenced Element 1 and 4 of the City of Tucson's *General Plan* and the Preamble to the *Pantano East Area Plans*, specifically describing how the wellsite upgrade upholds and complies with the conditions in these documents.

Mr. Bangs addressed the Appellants' concern with the compatibility of the wellsite improvements and the surrounding neighborhood. He stated there were exhibits provided in the letter Halcyon wrote to Mayor and Council of the photo simulation of what the view of the wellsite will be from both the nearest residential dwelling and from Old Spanish Trail. He asserted Halcyon's commitment to diminish visibility as part of the conditions recommended by staff and imposed by the Zoning Examiner. He asked Mayor and Council to support the Zoning Examiner's decision.

Mayor Rothschild asked if the review process required Halcyon to demonstrate they could execute the upgrades. He requested the part of the record where this was established. He also asked if there was an agreement between MC Properties and Halcyon Water Company. In addition, he questioned whether or not an agreement was required prior to development.

Mr. Bangs confirmed Halcyon's financial ability to construct. He stated MC Properties, the developer of the adjacent residential project, would be required to fund the wellsite upgrade. He assured the improvement would not only benefit existing Halcyon customers, but future customers other than developers.

Mr. Bangs stated the agreement and the property would probably be constructed in tandem, but Halcyon would have to show the ability to construct that in order to proceed with the development of the property.

Council Member Cunningham asked about the status of the neighbors' water supply in the event the development dissolves and if the covenant with the neighbors water gets compromised.

Mr. Bangs said the area of the proposed residential project and the wellsite were currently served by Halcyon. He stated that it is a private water company and has a certificate of convenience and necessity from the Corporation Commission and that it is the sole provider of water in that area. He stated Halcyon served potable water, domestic service, to all the properties within its service area and it was obligated to do so.

Council Member Cunningham asked if the new well would serve the new neighbors and also serve another two hundred households.

Mr. Bangs stated that it currently serves existing residents in the housing service area and businesses.

Council Member Cunningham asked how many acre feet was the well site wheeling in a year.

Mr. Bang stated the question would have to be answered by the engineer. He stated that residences would be served, it also included an educational use, JTED, and businesses and in addition there was future development for which there was zoning for a development plan from the City of Tucson, and a plat for approximately thirty townhomes (Camino Seco Village).

Council Member Cunningham asked if those homes existed now.

Mr. Bangs stated that they do not exist at this time. But the entitlements for them were in place and once there was market for them, they could be developed and Halcyon would be required to serve them.

Council Member Cunningham asked how deep the well was now.

Mr. Bangs stated that he did not know the answer to that question.

Council Member Cunningham stated that even if Halcyon gets the well expansion and they had to go fifty acre feet down that they were going to have to wheel 14.6 million gallons a year, that was two hundred households at about eighty gallons a person, two per household, that was going to be your number. He asked how Halcyon was going to get fifty acre feet out of the ground. He also asked why Mayor and Council would allow this when you could be a Tucson Water Customer.

Mr. Bangs stated that he would like to have Mr. Iezzi, the engineer, answer Council Member Cunningham's question. He stated the purpose of this special exception application was to upgrade the existing wellsite both in terms of its pumping ability, increasing its capacity to seven hundred and fifty gallons per minute and the storage capacity. In the event there was an outage, the upgrade would ensure sufficient water reserves to serve customers.

Council Member Kozachik asked the City Attorney what was germane to what the decision was. He stated they were given a question about land use issues and not prospective development or water use.

Michael Rankin, City Attorney, stated the scope of the appeal was framed by the special exception appeal procedure under the *Code* and the nature of the appeal filed by the appellant, which was in terms of structure not water policy.

Mayor Rothschild expressed his concerns about the appeal and allowing the water company to supply water to the neighborhood. He also stated that if Mayor and Council would not find basis to overturning the Zoning Examiner's decision and at some point in time the wellsite does not get the upgrades and then we would have additional development without the infrastructure support. He asked if there was any documentation on this and if not he thinks that more work needed to be done.

Mr. Bangs stated a subdivision report would have to be done to insure that there was enough ground water for one hundred years. He also stated they would have to show the pumping capacity for the wellsite.

Council Member Cunningham expressed his concern regarding the capacity of water Halcyon proposed to pump. He stated he understood Halcyon had the zoning for two hundred homes. His concern was the amount of water being pumped out of the ground. He also expressed his concern for water conservation and ground water supplies.

Mr. Bangs addressed the impact of the wellsite upgrades and the development they were intended to support on ground water supplies in the global sense. He said this issue came up at the previous hearings, he said they were able to extrapolate that 2005 report and the impact was unnoticeable in the grand scheme. It did come up in the hearing and there were materials that were presented dealing with that issue.

Mayor Rothschild decided to go to the public hearing on this and asked Paul Lezzi to speak after the public hearing.

John Moritz stated he was appealing the decision made by the Zoning Examiner. He stated he was speaking on behalf of the Halcyon Acres Neighborhood, customers of the Halcyon Water Company and 324 signatures in support of the appeal. He asked that the Mayor and Council support their appeal and overturn the Zoning Examiner's decision to allow this special exception land use.

Jonathon Kent, a Halcyon customer, asked the Mayor and Council reverse the decision of the Zoning Examiner's in the special exception case. He stated the developer decided to get the special exception and a variance from the Board of Adjustment rather than to examine and consider the alternatives. He stated the City of Tucson Water Company had been successful in building water storage at grade level or below ground.

Paul Iezzi, Rick Engineering, stated that he was a civil engineer not a ground water engineer. He discussed the 2005 report regarding the Presidio Trails subdivision, which was proposed on the same site as the mulit-family subdivision was proposed. Clear Creek Associates, a ground water engineering company, prepared an application to ADWR and they were granted a certificate of a one hundred year water supply. He explained the finding in the report and the drawdown of the ground water table.

It was moved by Council Member Fimbres, duly seconded, and passed by a roll call vote of 7 to 0, to close the public hearing.

Council Member Cunningham asked if the zoning change included an upgrade to the neighbors' water system or solely Halcyon's water site.

Ernie Duarte, Director, Development Services, stated the upgrade was an appeal to the special exception, not a zoning change, but it was specific to the Halcyon Acres water site.

Council Member Cunningham asked if the water issue did not exist, did the Mayor and Council have the authority to stop construction of the apartment complex.

Mr. Duarte stated the apartment complex was appropriately zoned C-1, Residential Scaled Commercial Development and absent any request for zoning change, the developer would have the right to develop with the underlying zoning.

Council Member Cunningham asked if development would occur in the event the proposal was denied. He inquired about the developer's course of action if Special Exception application was denied.

Mike Rankin, City Attorney, stated the decision would be up to the developer on how to have water revision to the site.

Council Member Cunningham said current City policy was to move away from private wells and to Tucson Water. He questioned why this policy was not considered in the decision.

Mr. Rankin explained a request was presented to the Zoning Examiner for review and decision, and then to Mayor and Council. Criteria are those included in the code and were set forth in the materials. The criteria that go into the consideration were whether the request meets the standards that were applied to the adopted code and regulations, does not adversely affect the adjacent land uses and the surrounding neighborhoods, provides for adequately and efficient access vehicular and pedestrian, whether it could be adequately and efficiently served by public facilities and serves and whether the proposal complied with the general plan and applicable neighborhood and sub area plans.

Council Member Cunningham stated this was the point he was trying to make and that the well did not affect all the items that Mr. Rankin explained but what the well serves. He said in a perfect world the neighbors and the developer would speak to each other and make it work. This was not what occurred. He understood they were digging fifteen feet below where they were now, but in four years that would be sixty feet. He stated the current well agreement would service ninety-nine customers.

It was moved by Council Member Cunningham, duly seconded, to reverse the Zoning Examiner's decision, grant the appeal and deny the Special Exception application.

Council Member Kozachik requested the Zoning Examiner address the main concerns with the proposal.

Linus Kafka, Zoning Examiner, stated it was not his intent to make a call on limiting testimony. He did not feel it was productive during the hearing. In addition, he felt the applicant had shown the mitigation plan was sufficient to meet the stated policies and the code. He noted his decision required a Board of Adjustment (BAJ) approval based on the set back issue, because it was not in conformance with the code provisions at that time.

Council Member Scott asked if delaying the decision would help stake holders come to a different conclusion.

Council Member Cunningham inquired about the legality of sustaining the public hearing for further dialogue on the issue.

Council Member Scott suggested continuing the item to allow for further discussion between the parties involved.

Mr. Rankin stated the Mayor and Council could continue the appeal for a period not to exceed forty-five days. He noted that, in this case, there was a thirty day continuance period because they only had one opportunity to reconsider this proposal at the August 6, 2013, Mayor and Council meeting. He stated that Council Member Cunningham was correct in that the rules under the *Code* prohibit ex parte communications, meaning the parties or persons involved in the appeal could not have communications with the Mayor and Council or staff, but they were not prohibited from communicating with one another.

Council Member Scott asked if Council Member Cunningham would entertain a motion to continue this item.

Council Member Cunningham expressed his desire to grant the appeal and let the stake holders continue discussion after the decision.

Mayor Rothschild asked if they could continue the appeal for a period exceeding forty-five days.

Mr. Rankin said the *Code* only allowed for forty-five days unless a longer time frame was agreed to by the Appellants.

Council Member Uhlich stated it was her understanding that the well site upgrade was needed for storage capacity in the event of a disruption of the wells operation or capacity to pump.

Mr. Bangs answered affirmatively.

Council Member Uhlich asked if there has been any discussion for alternatives for providing water service in such instances. For example, if there was a wheeling agreement opportunity with Tucson Water so that if there is a concern an alternative was available.

Mr. Bangs answered no. He stated that it was his understanding that our provider is Halcyon and we could not reach out to Tucson Water. He stated Halcyon had to go through this process and have it finish. He stated Halcyon preferred a prompt decision to allow adequate time to pursue other alternatives if necessary.

Council Member Uhlich said her suggestion was not to take over service in the area, but perhaps establish an intergovernmental agreement (IGA) or utility agreement should disruption of the tank occur. She said this was an alternative to a large capacity tank and would benefit Tucson Water rather than having individual reservoirs for private water companies.

Mr. Bangs stated Halcyon currently had an agreement with Tucson Water for emergency services. However, he noted a third party agency—Arizona Department of Environmental Quality (ADEQ), also imposed regulatory standards and required a certain level of standby reservoir capacity.

Gene Wilcox, President, Halcyon Water Company, stated that Tucson Water was not allowed to come into their area.

Council Member Uhlich questioned the need for the reservoir addition since there seemed to be an agreement with Tucson Water in case of emergency.

Mr. Bangs stated the President and majority owner of Halcyon did not want to lose their customer base.

Council Member Uhlich assured this was not the case. She noted similar agreements with other entities and its intention to provide a cooperative level of services.

Council Member Cunningham stood by his motion to reverse the Zoning Examiner's decision.

Council Member Kozachik spoke in support of Council Member Scott's proposal and questioned the applicant's opposition.

Mr. Bangs expressed this matter started late last year. He stated they have had two neighborhood meetings. He stated the need to move forward with a decision.

Council Member Kozachik asked if the build out for the residential expansion was imminent.

Mr. Bangs answered affirmatively. He stated that Halcyon has had their approvals for some time and they were ready to continue.

Council Member Kozachik commented on the short length of the design review process in comparison to other similar projects.

Council Member Cunningham noted the project was plated and approved and did not come to Mayor and Council. He stated the unique nature of this design review process and said it was faster than any other of its kind.

Mayor Rothschild stated there was a motion to deny. If this motion was successful the process would go on. The zoning was in place and the neighborhood would be built out in some way. He stated there was a motion to continue this decision contingent upon the Appellants' decision to further discussion with the developer. He went on to state the zoning could not be changed by the Mayor and Council. He asked the Appellants if additional conversation was an option or if the Mayor and Council should move forward with a decision.

Mr. Moritz stated he did not feel discussion with the developers would be productive.

Mr. Rankin contended Vice Mayor Romero must abstain from the vote because she was not present for the entire discussion due to technical difficulties.

Vice Mayor Romero agreed with the decision.

Mayor Rothschild asked about the consequences of a split vote.

Mr. Rankin said he would answer that question if that occurred.

The motion to reverse the Zoning Examiner's decision, grant the appeal and deny the Special Exception application passed by a roll call vote of 6 to 0, (Vice Mayor Romero recused due to technical difficulties that prevented her from being present for the entire public hearing).

11. ZONING: (C9-03-05) COSTCO – GRANT ROAD, R-3 TO P, ORDINANCE ADOPTION

Mayor Rothschild announced City Manager's communication number 272, dated July 9, 2013, was received into and part part of the record. Mayor Rothschild asked the City Clerk to read Ordinance 11090 by number and title only.

Ordinance No. 11090 relating to Zoning: amending zoning district boundaries in the area located north of Grant Road, south of the Pantano Wash, approximately 800 feet west of the Wilmot Road alignment in Case C9-03-05 Costco – Grant Road, R-3 to P Zone and setting an effective date

It was moved by Council Member Cunningham, duly seconded, and passed by a roll call vote of 7 to 0, to approve and pass and adopt Ordinance 11090.

12. ZONING: (C9-12-12) SPEEDWAY RECYCLING FACILITY, SR AND R-2 TO PLANNED AREA DEVELOPMENT (PAD) ZONE, CITY MANAGER'S REPORT, DIRECT ORDINANCE ADOPTION

Mayor Rothschild announced City Manager's communication number 301, dated July 9, 2013, was received into and part part of the record. He also announced this was a request to rezone property located north of Speedway Boulevard and accessed via Prudence Road. He said the Zoning Examiner recommends denial of the Planned Area Development. Staff recommends approval of the Planned Area Development Zone and adoption of the Ordinance subject to certain conditions.

Mayor Rothschild asked if the applicant or representative was present and agreeable to the proposed requirements.

Mike Grassinger, Applicant, stated they were comfortable with the recommendation by the City Manager and agreeable to all conditions.

Mayor Rothschild asked the City Clerk to read Ordinance 11094 by number and title only.

Ordinance No. 11094 relating to Zoning: amending zoning district boundaries in the area located approximately 900 feet north of Speedway Boulevard accessed via Prudence Road in case C9-12-12 Speedway Recycling – Speedway Boulevard, SR and R-2 to PAD zone; and setting an effective date.

A super majority vote would be necessary to approve the rezoning ordinance.

Council Member Cunningham expressed his support for the project stating that despite the landfills proximity to residential housing, it provided green collar jobs that benefited the economy.

It was moved by Council Member Cunningham, duly seconded, and passed by a roll vote of 7 to 0, to pass and adopt Ordinance 11094.

13. ZONING: (SE-13-22) AT&T – FORT LOWELL ROAD, C-1 ZONE, WIRELESS COMMUNICATIONS FACILITY, SPECIAL EXCEPTION LAND USE, CITY MANAGER'S REPORT, DIRECT ORDINANCE ADOPTION

Mayor Rothschild announced City Manager's communication number 279, dated July 9, 2013, was received into and part part of the record. He also announced this was a Special Exception land use request for property located south of Fort Lowell Road and west of Campbell Avenue. He said the Zoning Examiner and staff recommend approval of the Special Exception land use with conditions.

Mayor Rothschild asked if the applicant or representative was present and agreeable to the proposed requirements.

Greg Glake (ph), AT&T, stated they were agreeable to the proposed requirements.

Mayor Rothschild asked the City Clerk to read Ordinance 11092 by number and title only.

Ordinance No. 11092 relating to Zoning; a special exception land use – Wireless Communications Facility – SE-13-22 AT&T – Fort Lowell Road, C-1 Zone – located 180 feet south of Fort Lowell Road and 610 feet west of Campbell Avenue; approving with conditions the construction of a wireless communication tower and antennas, concealed within an artificial palm tree (monopalm), 65 feet in height, within an approximately 23'-4" by 16'-4" lease area in the C-1 Zone; and setting an effective date.

Council Member Uhlich noted the health concerns associated with these types of installations. She said the County has requested prevue over this issue with the FCC, but she would bring forth a resolution in support of the County. In addition, Ms. Uhlich mentioned a protest against noise; however, it was her understanding this tower did not have air-conditioning requirements. Thus, it would not generate the same level of noise.

Mr. Glake (ph) answered affirmatively.

It was moved by Council Member Uhlich, duly seconded, and passed by a roll vote of 7 to 0, to pass and adopt Ordinance 11092.

14. TUCSON CODE: AMENDING (CHAPTER 6) THE INTERNATIONAL RESIDENTIAL CODE RELATING TO GRAY WATER PIPING

Mayor Rothschild annouced City Manager's communication number 269, dated July 9, 2013, was received into and part part of the record. He asked the City Clerk to read Ordinance 11089 by number and title only.

Ordinance No. 11089 relating to Buildings, Electricity, Plumbing and Mechanical Code; "Residential Gray Water Ordinance" requiring installation of gray water "stub-outs" in residential construction; requiring that gray water systems comply with applicable regulations; amending Tucson Code Chapter 6, Article III, Division I, by amending Section 6-38, Section 2601.2.1 "Gray Water Piping"; and adding table 2601.2, Minimum Gray Water Fixture Requirements, as a local amendment to the International Residential Code; and declaring an emergency.

It was moved by Council Member Cunningham, duly seconded, and passed by a roll vote of 7 to 0, to pass and adopt Ordinance 11089.

15. GENERAL PLAN: ADOPTING PLAN TUCSON – CITY OF TUCSON GENERAL AND SUSTAINABILITY PLAN AND CALLING A SPECIAL ELECTION ON NOVEMBER 5, 2013 REGARDING THE RATIFICATION OF PLAN TUCSON

Mayor Rothschild announced City Manager's communication number 310, dated July 9, 2013, was received into and part part of the record. He asked City Clerk to read Resolution 22067 by number and title only.

Resolution No. 22067 relating to Planning and Zoning; adopting "Plan Tucson – City of Tucson General and Sustainability Plan 2013;" and declaring an emergency.

Michael Rankin, City Attorney, noted the possibility of typo's and scrivener's error in the plan document, due to the fact that staff work was continuing up to and including the time of delivery of the item to the Mayor and Council. He stated these corrections will be made without going to back to the Mayor and Council for approval.

Council Member Cunningham and Vice Mayor Romero thanked staff for their work on this plan.

Council Member Cunningham asked if the Ordinance and Resolution could be approved together.

Roger Randolph, City Clerk, clarified that the motions must be made separately.

It was moved by Council Member Cunningham, duly seconded, and passed by a roll vote of 7 to 0, to pass and adopt Resolution 22067.

Mayor Rothschild asked the City Clerk to read Ordinance 11098 by number and title only.

Ordinance No. 11098 relating to Elections; pursuant to A.R.S. § 9-461.06 and Chapter XX of the Tucson Charter, calling a special election to be held on November 5, 2013, for the purpose of submitting to the qualified electors of the City of Tucson, Arizona, as a referred measure, a question regarding the ratification of the City of Tucson General Plan for land use within the City, known as "Plan Tucson – City of Tucson General and Sustainability Plan 2013;" and declaring an emergency.

It was moved by Council Member Cunningham, duly seconded, and passed by a roll vote of 7 to 0, to pass and adopt Ordinance 11098.

16. REAL PROPERTY: APPROVING A GOVERNMENT PROPERTY LEASE EXCISE TAX LEASE AGREEMENT WITH HP ARMORY PARK, LLC FOR HERBERT RESIDENTIAL PROJECT

Mayor Rothschild announced City Manager's communication number 306, dated July 9, 2013, was received into and made part of the record. He asked the City Clerk to read Resolution 22104 by number and title only.

Resolution No. 22104 relating to Real Property; authorizing and approving the Government Property Lease Excise Tax ("GPLET") Lease Agreement between the City of Tucson and HP Armory Park, LLC for Herbert Residential Project; and declaring an emergency.

It was moved by Council Member Kozachik, duly seconded, and passed by a roll vote of 7 to 0, to pass and adopt Resolution 22104.

17. AGREEMENT: APPROVING A MASTER OPERATING AND OCCUPANCY AGREEMENT WITH THE METROPOLITAN TUCSON CONVENTION AND VISITOR'S BUREAU, DBA VISIT TUCSON

Mayor Rothschild announced City Manager's communication number 281, dated July 9, 2013, was received into and made part of the record. He asked the City Clerk to read Resolution 22093 by number and title only.

Resolution No. 22093 relating to Outside Agency Activities; authorizing and approving the Master Operating and Occupancy Agreement between the Metropolitan Tucson Convention and Visitor's Bureau, dba Visit Tucson, and the City of Tucson; and declaring an emergency.

It was moved by Council Member Uhlich, duly seconded, to pass and adopt Resolution 22093.

Mayor Rothschild commented on the term of the agreement, noting it was annually renewable rather than long term. In addition, he asked for clarification on the percentages mentioned in the agreement.

Chris Kaselemis, Economic Initiatives Director, explained that 3% of allocation would go to the TCC Marketing Fund.

Council Member Cunningham stated his concern with the City's past practices with Visit Tucson when it was formerly Metropolitan Tucson Convention and Visitor's Bureau (MTCVB), relating to sporting events.

Vice Mayor Romero expressed her appreciation to the staff involved with Visit Tucson. Also, she reflected on the project's positive effort to expand the Tucson-Mexico relationship.

Resolution 22093 was passed by a roll call vote of 7 to 0.

18. SETTLEMENT AND DEVELOPMENT AGREEMENT: APPROVING THE SETTLEMENT AGREEMENT AND AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH BP POST DEVELOPERS, LLC AND WITH THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT

Mayor Rothschild announced City Manager's communication number 304, dated July 9, 2013, was received into and made part of the record. He asked the City Clerk to read Resolution 22102 by number and title only.

Resolution No. 22102 relating to Development; authorizing and approving a Settlement Agreement and Amended and Restated Development Agreement with BP Post Developers, LLC and with the Rio Nuevo Multipurpose Facilities District.

Council Member Kozachik said he thought they were extricated from the litigation. He asked if this agreement would reestablish the City's involvement in this matter.

Michael Rankin, City Attorney, said the City remained a party in the litigation even though the Kromko Lawsuit cause of action was dismissed by the court. He discussed the settlement agreement they executed in February with Rio Nuevo. Mr. Rankin explained that the Rio Nuevo District indemnifies us essentially defends us and hold us harmless against remaining claims in that litigation. He explained that we were a party to the agreement that was presented to Mayor and Council, and this agreement was in addition to settling all of the remaining claims in that litigation resulting in dismissal of that litigation with prejudice, meaning it can't be refiled. It represented a restated and amended development agreement. The City of Tucson was a party to the original development agreement. He stated the amendment could not be amended and restated unless all the parties to the original agreement are a party to the amendment. He also stated one of the provisions provided that in the event that the Rio Nuevo District dissolved over the period of the next however many years, that we would stand in the place of the Rio Nuevo District in terms of being able to secure the remedy against the developer if the developer did not perform or secure a permit in the applicable time period. If the developer did not perform under this agreement, without further litigation, the developer would be required to convey the property back to the Rio Nuevo District at no charge to the district. The City being a part of this agreement, in the event of the Districts dissolution, the property would be conveyed to the City Of Tucson.

Council Member Kozachik questioned the presence of a third party, meaning in the event Rio Nuevo defaults would the property default to the developer.

Mr. Rankin stated the property was already titled to the developer.

Council Member Kozachik stated the thirty pages did more than just wash everyone's hand of the litigation. He stated it looked a lot like a piece of legislation that was attempted a few sessions ago where we were giving fee waiver, TRE waivers, air right fee waivers, and gave Rio Nuevo unilateral approval of conceptual design. He also stated that it gave the developer "the right to obtain credits for water and sewer". He asked why we were not using two paragraphs that stated "washing hands" of future litigation and extending to the developer any development incentives available to anyone else.

Mr. Rankin stated the agreement clearly specified the developer could apply for incentives that might be available through the City of Tucson in the same fashion and manner as any other developer. However, he said the agreement itself did not give any discretionary approval that was required by the City, which remained a separate legislative decision of the Mayor and Council.

Mr. Rankin added, with respect to approval of the concept plans, the agreement provided for the approval of the concept plans by the Rio Nuevo District; however, when the developer submitted the concept plans to the District, he was also required to submit it to the City, and if there were any zoning adjustments that needed to be accomplished by the developer those must come to the Mayor and Council through the normal approval process.

Mr. Rankin also noted the two areas of the agreement where the developer was entitled to a benefit in the context of a City benefit—Temporary Revocable Easements (TRE's) and the air rights. Those provisions were carried over from the currently existing development agreement approved in 2004. Specifically in respect to the TRE's it provided that the application fees apply but the annual fee is waived. The other City commitment was to assign a staff member as a project liaison to guide them through the entitlement process. Despite this, all normal approval processes remained in place. All code and legal requirement remain in place.

Mayor Rothschild said outside of what was expressed, the developer should be treated no different than anyone else. Impact fees were waived for anything over thirty thousand square feet.

Mr. Rankin said the impact fees addressed were consistent with the impact fee provisions of City Code. He explained the provision that were already recognized were that if you are in the central district your impact fee are assessed at a twenty three percent rate less than the other impact fees districts in the City. He stated it was the same with the ten thousand dollar permit fee. It was a by right incentive, just by being in the downtown area. Any developer in the same address would get the same treatment. He went on to state under the impact fee structure, when there was redevelopment; you received credit for the square footage of the existing structure.

Mayor Rothschild questioned the credits that were to be received. He stated that it had to do with the existing code and was not giving any additional benefits.

Mr. Rankin answered affirmatively.

Mayor Rothschild asked about sewer and other infrastructure benefits.

Mr. Rankin stated the sewer and water credits were deemed acceptable provisions and consistent with the current handling of those issues by the Environmental Services Director and the Water Attorney. He also answered affirmatively to the time constraints and briefly explained the extension requirements.

Mayor Rothschild asked for clarification on the length of the time given to the developer. He wanted to make sure it was one year and one year.

Mr. Rankins stated that it was two years with the possibility of two additional years and two additional years after that if the developer was demonstrating reasonable progress toward securing the permit for vertical construction of twenty thousand square feet of improvements.

Mayor Rothschild asked if the Council had some determination into whether that progress was being made or was that left to Rio Nuevo District.

Mr. Rankin stated Council would in the last one year period. He did not want to overstate the rigger of what is required for the extension on the building permit period. He stated the developer would get an extension after the second year for the first year extension as long as the developer was complying with the reporting requirements. He stated the City never owned this property. The property was acquired by the Rio Nuevo District and transferred to the Developer. He explained that in the event of a default it was the Rio Nuevo District that had the right to pursue a default not the City of Tucson. He stated that it was a possibility that the time period to secure a permit could be four years from the full execution of the agreement.

Council Member Kozachik stated in section 2.7 spoke about the builder allowing the permit to lapse and the City of Tucson was called to support the re-platting of the property in which case the four year was a moot point if we were in the process of re-platting. He asked if there was a dispute would we be indemnified from future litigation if the developer did not perform. He asked if there was some statutory reason that Council had to act this evening.

Mr. Rankin claimed there was no statutory reason to act that evening. He explained the item was put on the agenda because the litigation continued to proceed. There were motions and pleading deadlines at the end of that month and beginning of the next month. He stressed this was Mayor and Council's last chance to address this matter before dealing with these issues in court. However, he stated the Mayor and Council could continue this item to the August 6, 2013 meeting.

Council Member Kozachik asserted the need for clear and concise language in the agreement. He also asked if the City would be affected in the event the developer did not perform.

Mr. Rankin said the City was not indemnified and if the developer did not perform they would not have a cause of action against the City under the agreement. He stated that if the City did not agree to the current proposal, the litigation would not be dismissed; in fact, they would continue under the prior settlement agreement with Rio Nuevo to be indemnified in that litigation.

Mayor Rothschild stated this was a complex matter. He asked if the Mayor and Council did not like this agreement, the City would still be indemnified.

Mr. Rankin answered affirmatively.

Mayor Rothschild asked if the Mayor and Council's decision impacted the prospect of future litigations.

Mr. Rankin stated he did not currently foresee future litigations.

Council Member Kozachik asked for clarification to section 3.2 of the agreement, specifically regarding credits for hookups.

Mr. Rankin reiterated Environmental Services and the water attorney's review and approval of the terms in the agreement.

Council Member Kozachik said he would not support the agreement in its present form.

Council Member Cunningham stated his concerns with page 19, Section 4.3 of the agreement regarding City and District Default. He stated he could not understand how we were in default. He stated that he agreed with Council Member Kozachik. He asked why we had to be involved with this project.

Mr. Rankin stated the City was involved with this discussion because they were a party to the existing agreement and the ongoing litigation.

Fletcher McCusker, Rio Nuevo District, said the Mayor and Council did not have to make a decision that evening. However, he noted there were pending motions and ongoing litigation that had to be addressed. He stated that the Rio Nuevo Board did approve this and that it was before Mayor and Council to concur. He stated one year ago the District was embroiled in nine lawsuits. He stated this was one of the messiest of the lawsuits. He stated the property was deeded to the developer without a fallback position for either the City or the District. He wanted to get out of the lawsuit business and get the developers back to work. He went on to say the conditions in this agreement were the same as in the old agreement, it had just been redrafted. The developer would have to go to Planning Services and Zoning with any plans presented. The developer was presented with the opportunity to move forward. He stated if this could not be settled, it would be in court for years.

Mayor Rothschild asked if there was an issue with a continuance of this item for thirty days.

Mr. McCusker stated there would be no issue on the part of the District if this item was continued.

Council Member Kozachik noted many of the current incentives did not exist when the original development agreement was put in place. He stated the agreement should clarify the developer had access to any incentives, but nothing more or less.

Mr. McCusker said they could not compel the developer to do anything they did not want or have to do. They were titled to this property. In addition, he stated there were no conditions associated with the title, no benchmarks for the development to proceed, and no recourse for the City or the District in the event they failed. He said they tried to give the developer some time, but also created stipulated damages that if he was not successful the property reverted back. The developer agreed to this, which was a major milestone. He expressed his concern with continued discussion of the agreement.

Council Member Fimbres inquired about the legal repercussions in the event the decision was pushed back thirty days.

Mr. Rankin said they would draft up stipulations to move deadlines and reset the schedule for the court proceedings.

Council Member Scott asked if Mr. Bourn and his associates and the Rio Nuevo Boards have already agreed and passed this proposal.

Mr. Rankin answered affirmatively.

Council Member Scott inquired whether the City was the last signatory on the agreement and if a ready decision needed to be made in order to motivate the developer.

Mr. Rankin answered that he has received the signature page executed by the developer and the Rio Nuevo Board had approved it but they had not signed it due to it being contingent on Mayor and Council's approval.

Council Member Scott stated she thought there should be an incentive on the part of the developer to move forward. She inquired if changes to the language in the agreement could be made at a later date.

Mr. Rankin answered affirmatively. He stated that it would have to be agreeable to all parties. He noted that Mayor and Council could continue this item if they had any reservations.

Council Member Scott suggested moving forward with the agreement due to the fact that revisions could be made in the future. Also, she stressed the importance of incentives for the developer in order for progress to be made on the property.

It was moved by Council Member Scott, to pass and adopt Resolution 22102.

The motion died due to a lack of a second.

Mayor Rothschild noted the difficulty in obtaining amendments and changes once the agreement was signed. He emphasized the importance of further discussion before a final decision.

It was moved by Council Member Kozachik, duly seconded, and passed by a roll vote of 7 to 0, to continue the item to the Mayor and Council meeting on August 6, 2013.

19. BOARDS, COMMITTEES AND COMMISSIONS: APPOINTMENT TO THE CIVIL SERVICE COMMISSION

Mayor Rothschild announced City Manager's communication number 305, dated July 9, 2013, was received into and made part of the record. He asked the City Clerk to read Resolution 22103 by number and title only.

Resolution No. 22103 relating to the Civil Service Commission; appointing Gerald Hirsch as a Civil Service Commissioner to fill the existing vacancy caused by the resignation of Jose Ramirez, for a term expiring on March 26, 2019; fixing Annual Compensation; and declaring an emergency.

It was moved by Council Member Kozachik, duly seconded, and passed by a roll vote of 7 to 0, to pass and adopt Resolution 22103.

20. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS

Mayor Rothschild announced City Manager's communication number 302, dated July 9, 2013, was received into and made part of the record. He asked for a motion to approve the appointments in the report.

It was moved by Council Member Fimbres, duly seconded, and passed by a roll call vote of 7 to 0, to approve the appointment of Christopher Pankratz to the Tucson Commission on Gay, Lesbian, Bisexual and Transgender Issues (GLBT).

Mayor Rothschild asked if there were any personal appointments to be made.

Mayor Rothschild noted that Council Member Scott did formally make an appointment to the Bond Project Advisory Committee.

Council Member Uhlich stated that she wanted to reaffirm a memo was issued and that Kevin Daily would serve for Ward 3.

Mayor Rothschild requested assurance that Council Member Kozachik and the City Manager's appointments would be received by the Clerk's Office within the next week.

Council Member Scott announced her personal appointments of Gail Bornfield to the Pima County/Tucson Women's Commission (PCTWC), and Matt Kopec to the Bond Project Advisory Committee (BPAC).

21. ADJOURNMENT: 8:57 p.m.

Mayor Rothschild announced the next regularly scheduled meeting of the Mayor and Council would be held on Tuesday, August 6, 2013 at 5:30 p.m., in the Mayor and Council Chambers, City Hall, 255 West Alameda, Tucson, Arizona.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the City of Tucson, Arizona, held on the 9th day of July 2013, and do hereby certify that it is an accurate transcription.

DEPUTY CITY CLERK

RWR:lo:yl